

EXHIBIT E

(continued)

1 marked as Exhibit 18?

2 A. Yes. Those are my words.

3 Q. Under Globe Wine -- it's on page 1 -- I
4 am sorry. I am looking at your response,
5 Mr. Rodio. You can forget about that other exhibit
6 for now. Let's just focus on 19. Under Globe Wine
7 do you see that?

8 A. Yes. Which one? Which one?

9 Q. I am only talking about Exhibit 19. I
10 moved on from 18.

11 A. Okay.

12 Q. Globe Wine the last sentence. Just read
13 that and tell me what you mean?

14 A. "A mistake was made on PA availability
15 in that after taking the Winston distribution, the
16 Winston box may have been rehit causing the total
17 Winston distribution to be removed after the proper
18 distribution was recorded." Okay. If you hit a
19 key twice, it would cause all the distribution to
20 be wiped out, so it's possible I may have hit
21 another key wiping out my distribution, so I was
22 thinking that everything was done properly and it's
23 possible I hit a second key that wiped it out.

24 Q. And that would be a human error?

1 A. Computer does it, too. Yes. Well --

2 Q. But you are the one that hit the key
3 twice?

4 A. I am not sure. I am saying that is a
5 possibility. That may have happened.

6 Q. But --

7 A. This is three years ago.

8 Q. Did you know at the time what was wrong?

9 A. Well, if I did, I would have corrected
10 it.

11 Q. Would you in your response have wrote to
12 the best of your recollection what may have gone
13 wrong?

14 A. I am trying to figure out. If you get a
15 computer printout and it's wrong, you felt that you
16 did it right, you try -- I have no idea. Maybe the
17 computer didn't communicate well that day. Maybe
18 there was something wrong. Maybe there was an
19 electrical problem in the system. I have no idea.

20 Q. Do you believe that you did make
21 distribution errors?

22 A. I tried to do the best I could. I never
23 intentionally made a mistake.

24 Q. Did you think you did make mistakes?

1 A. Do I think I did? I never intentionally
2 made a mistake.

3 Q. I never said it was intentional. Nobody
4 ever said it was intentional. Are you willing to
5 admit that you made mistakes?

6 A. I don't know of any intentional mistake
7 I made.

8 Q. Are you willing to admit that you may
9 have made unintentional mistakes?

10 MR. SAHADY: Objection. Objection.

11 A. It's possible.

12 Q. All right. Flip to the next page. The
13 first full paragraph one, two, three, four lines
14 down. Can you count down?

15 A. Yes. Four lines down. Which one?

16 Q. First full paragraph.

17 A. Yes.

18 Q. It begins "I did make distribution
19 errors."

20 A. Where does it say that?

21 Q. What? Do you see that?

22 A. It says that I apologized for doing
23 that.

24 Q. Did you write that?

1 A. Did I write this?

2 Q. Yes. Did you prepare this document?

3 A. Looks like I did.

4 Q. All right. What distribution errors did
5 you make? Do you know?

6 A. Say that I had an emergency at home, and
7 I voicemailled the office that I have a problem I
8 need to take care of at home. The easy approach
9 may have been to take a vacation day, but I decided
10 to handle the situation and make the 140 mile round
11 trip to Fall River. I was rushed and I tried to do
12 my best.

13 Q. "I did make distribution errors. There
14 was one in which I accidentally wiped out Winston
15 distribution after properly taking distribution."

16 A. Maybe this was something I thought of
17 that may have happened afterwards. I was trying to
18 figure out what caused all the distribution to be
19 wiped out, maybe my accident that happened or
20 something, so I apologized to Mr. Fasciani and told
21 him there was nothing I could do about the past but
22 would try to do a better job in the future.

23 Q. But in this document you did acknowledge
24 that you made mistakes?

1 A. Well, no. I was trying to just explain
2 how the incident possibly happened.

3 Q. What did you mean by "I did make
4 distribution errors"?

5 A. Well, I put down -- he was asking me why
6 it came out? I said possibly I pushed the wrong
7 button or maybe the computer --

8 Q. That is what it says, is it?

9 A. I accidentally wiped out Winston by --

10 Q. That says you did that?

11 A. That was one in which I accidentally wiped
12 out distribution.

13 Q. That was your response at the time,
14 right?

15 A. Yes.

16 Q. Did you give Mr. Fasciani any other
17 response?

18 A. I have no idea. This is the only one I
19 can see. Mr. Fasciani wrote so many letters. I
20 couldn't keep track of them. I would have had to
21 hire a private secretary.

22 MR. LOFTIS: 20.

23 (Exhibit Number 20 marked for
24 identification.)

1 Q. That's another PPR, I believe, Number

2 20. Is that one you have seen before?

3 A. I don't remember seeing this.

4 Q. Under significant strengths it says "as
5 per your request, I assisted you with 2 RBI
6 installs today." Do you remember requesting
7 Mr. Fasciani to assist you?

8 A. There were two times I think he helped
9 me. This may have been one of them.

10 Q. Do you recall asking him to help you?

11 A. I just told him there was no help, and
12 if he could help me out, I would appreciate it.

13 Q. Right and he did?

14 A. Yes, on this one.

15 Q. And on development needs he talks about
16 new EDLP guidelines. Was it your understanding
17 that if the account couldn't meet the guidelines
18 they were to be removed from the EDLP program?

19 A. Yes. They all met the guidelines, but a
20 lot of the problem was because of competition. You
21 could be lowest price today and somebody could walk
22 in tomorrow afternoon after I left and could be
23 lower.

24 Q. And if somebody -- the last sentence

1 says "should they be selling brands below EDLP, the
2 compliance report should read EDLP requirement not
3 met"?

4 A. Yes.

5 Q. Is that what you were supposed to do?

6 A. Well, I told Mr. Fasciani a lot of his
7 pricing was illegal. We were coercing to break the
8 state law.

9 Q. When did you tell him that?

10 A. Well, when I was working with him. I
11 said, You realize we are breaking the state law
12 with these prices because we were encouraging the
13 retailers to go below the state minimum with the
14 EDLP. If you would like a copy of the state
15 minimums, I have that.

16 Q. A copy of what?

17 A. The state minimum pricing.

18 Q. Oh, the regulation?

19 A. No. The state law. What the law says.

20 Q. That's okay.

21 A. Mr. Fasciani encouraged me to enforce
22 the EDLPs at a lower price than state minimum.

23 Q. Now, if the --

24 A. I told him that was wrong.

1 Q. If the -- if there is a brand that is
2 selling below Monarch --

3 A. Yes. We were supposed to match that
4 brand.

5 Q. And that could be done by either
6 lowering the price of Monarch or raising the price
7 of the competitive product, correct?

8 A. The other prices had state minimum
9 pricing on it, too.

10 Q. But they could raise it.

11 A. Hmm.

12 Q. They could raise it.

13 A. Most retailers wouldn't do that.

14 Q. Then you canceled the EDLP contract?

15 A. There wouldn't be any contract.

16 Q. Correct. You could have done that,
17 couldn't you?

18 A. When they wouldn't match the price, I
19 did cancel them, yes, if they didn't match it, but --

20 MR. SAHADY: There are no further
21 questions. Wait for the question.

22 Q. So you are saying that there were EDLP
23 contracts that you canceled?

24 A. Probably over the years, yes.

1 Q. And you canceled them because of the
2 price issues?

3 A. It's possible, yes. I can't tell you
4 the reason I canceled every one.

5 Q. But you were not supposed to tell the
6 account how they were supposed to price their
7 products?

8 A. In the contract it stated that the
9 account had to match the lowest price in the store.

10 Q. And that could be done by raising the
11 lowest price?

12 A. It didn't say that. It said you had to
13 match the lowest price. Didn't say anything about
14 raising the price.

15 Q. How -- well, you weren't suppose to tell
16 the retailer how to do you it, were you?

17 A. We were supposed to tell them if you
18 match the lowest price, then we'll pay you the
19 extra --

20 Q. How could the two be at parity?

21 A. He would have to lower the price of
22 Monarch to the lowest price in the store.

23 Q. They could raise -- let's use the
24 example you've got Monarch and USA.

1 A. Yes.

2 Q. Is USA a Commonwealth brand?

3 A. Yes.

4 Q. If USA is below Monarch, the EDLP
5 program the only thing it said was that to get the
6 benefits of that program Monarch has to be the
7 lowest or parity with the lowest price brand in the
8 store?

9 A. That is correct.

10 Q. That's the only thing it said?

11 A. Yes.

12 Q. And if USA is ten cents below Monarch,
13 that could be accomplished by lowering Monarch or
14 raising USA, couldn't it?

15 A. It didn't say that in the contract.

16 Q. How could you get them at parity?

17 A. Hmm.

18 Q. There are two ways you could get them at
19 parity, right?

20 A. We encouraged most of the retailers to
21 drop the price. It was done all over the country.

22 Q. How did you know that?

23 A. Just drive down the street. You can see
24 the prices all over Massachusetts not just this

1 area. You could drive through many areas. You
2 could go to New Bedford which is a different area.

3 Q. Are you saying that's just a natural
4 function of the EDLP contract?

5 A. No. We were encouraging the retailer to
6 break the law. That is basically it.

7 Q. Who told you that you were supposed to
8 get the retailer to go to the Monarch price?

9 A. It was right in the contract, and
10 Mr. Fasciani wanted -- he was always -- if off by
11 ten cents or if I was off by price, he would
12 reprimand me.

13 Q. Was he reprimanding you because the
14 contract was not in compliance?

15 A. No, because we didn't match the price.
16 Okay. If we didn't match the price, it wasn't in
17 compliance. If we matched the price, it was
18 breaking the Massachusetts state law.

19 Q. And if it's not in compliance, you
20 cancel the contract?

21 A. Correct. You cancel it, yes.

22 Q. And that is what you were supposed to
23 do, isn't it?

24 A. Well, what happened is a lot of the

1 contracts were in compliance. When I walked out of
2 the door somebody else -- I am not there for 30
3 days. Within those 30 days, another company could
4 walk in and the price would be below mine. He
5 would be out of compliance, and I would have no
6 idea about it.

7 Q. Did you have any -- did you ever go into
8 a store that had an EDLP contract and find that it
9 was out of compliance on the price issue?

10 A. I would just tell them you have to lower
11 the price.

12 Q. Doesn't have to lower the price. That
13 wasn't what the contract said.

14 A. They would have to match the price.

15 Q. And you were specifically trained by
16 Reynolds that you are not supposed to tell the
17 retailer how to get to parity?

18 A. Just tell him he had to match the price.

19 Q. That is what you were supposed to tell
20 the retailers, right?

21 A. Right.

22 Q. And that is what you told them, correct.

23 A. I told them they had to be at parity.

24 Q. And if they couldn't get to parity, you

1 were supposed to cancel the contract, right?

2 A. If they couldn't, right. Yes, I could
3 cancel. To be at parity though, it's
4 below state minimum pricing.

5 Q. Then you were supposed to cancel the
6 contract?

7 A. No. The retailers would lower it.

8 Q. If they wanted to?

9 A. We encouraged them to.

10 Q. How would you encourage them to lower it
11 below state minimum? You told them they had to be
12 in compliance with the contract.

13 A. They had to match the lowest price.

14 Q. And that is all you ever told them?

15 A. It said right in the contract they had
16 to be at parity at the lowest price in the store,
17 and many times it was breaking Massachusetts state
18 law, and I told Mr. Fasciani that.

19 Q. That the retailer was breaking the state
20 law?

21 A. He was aware of it and ignored it.

22 Q. You told Mr. Fasciani that the retailer
23 was breaking the state law?

24 A. I am saying the pricing that we were

1 encouraging is below state minimum. Do you realize
2 that.

3 Q. The pricing you were encouraging was
4 simply telling the retailer they had to comply with
5 this contract, right?

6 A. It had to be at parity, the lowest
7 price.

8 Q. And if USA is ten cents below Monarch,
9 couldn't parity be achieved by raising USA ten
10 cents?

11 A. We told the retailer he had to be
12 parity. We didn't say anything by raising prices.

13 Q. I know, but couldn't the retailer
14 achieve -- this a simple math question. I probably
15 shouldn't even have to ask it.

16 A. The simple answer was the contract had
17 to be at parity.

18 Q. And that was it?

19 A. That is what the contract said.

20 Q. And you never told the retailer to do
21 anything different to get to parity?

22 A. Said you have to be equal with the
23 lowest price in the store. That's what I was told.

24 Q. And you never told the retailer anything

1 different?

2 A. As far as I know, I just tried to word
3 it the proper way.

4 Q. And you were trained on how to word it?

5 A. The contract?

6 Q. No. You were trained on what to tell
7 the retailer?

8 A. No. We weren't trained. We were given
9 a piece of contract paper, said this is the
10 contract and this is what you had to do.

11 Q. You never got a CD?

12 A. An EDLP?

13 Q. Yes.

14 A. I cannot remember if we did or not.

15 Q. If you had, would you have looked at it?

16 A. Of course. I looked at everything.

17 Q. And if you looked at it, you would have
18 been responsible for abiding by it?

19 A. I tried to abide by all contract rules.

20 MR. LOFTIS: 21.

21 (Exhibit Number 21 marked for
22 identification.)

23 Q. I will run down the hall real quick
24 because I am sure you want to check that I didn't

1 slip something in on you. You can compare.

2 (Short pause.)

3 A. Oh, there's a difference already.

4 Somebody wrote something different.

5 Q. Have you had a chance to look at it?

6 A. Yes. Somebody wrote some things. That
7 I didn't do.

8 Q. What is that?

9 A. Some of the writing is not mine. This
10 is not mine.

11 Q. Oh, I am sorry. Where is that? I
12 apologize. That should not be there. That was a
13 note I made.

14 A. Okay.

15 Q. Let me have that back. I think, if you
16 don't mind, somehow that got put in there with my
17 notes on it.

18 THE DEPONENT: Should I give him it
19 back?

20 MR. SAHADY: Yes. It's fair to give
21 him back his notes.

22 Q. All right. Exhibit 21 is that the
23 termination document, Mr. Rodio?

24 A. Yes.

1 Q. And you did receive a copy of that,
2 correct?

3 A. Yes.

4 Q. All right. In looking on the second
5 page of the document --

6 A. Yes.

7 Q. -- Cloverdale Farms again that's noted
8 "failed to accurately record product availability,"
9 correct?

10 A. On that particular day, I told
11 Mr. Fasciani the computer had died. He went out on
12 two days, a Monday and a Tuesday. Monday I think
13 we only had four errors. Tuesday my computer had
14 broken down, and I had told him that I had to do a
15 lot of things from memory.

16 Q. How many errors were there the second
17 day?

18 A. I really don't know.

19 Q. But there were four the first day.

20 A. Second day I told him the computer was
21 broken and had some things to do from memory.
22 Cloverdale Farms did have Winstons. They only had
23 a few packs. They used to keep the box in the back
24 stock mixed together. Not all brands were required

1 for contract payment, so just to say blatantly that
2 the store was paid because of missing brands they
3 had to be requited brands.

4 Q. But you were supposed to record product
5 availability on all the brands that were in your
6 lap top, correct?

7 A. I did the best I could. My computer had
8 broken down that day.

9 Q. But the day you had four wrong, it
10 wasn't broken?

11 A. I had a cord that day.

12 Q. You had what?

13 A. I had a cord. Actually, the second day
14 I didn't have it.

15 Q. What kind of cord does the lap top --

16 A. You have to bring the whole electrical
17 cord out of your house. You have to take it out of
18 your house.

19 Q. Okay. Is it just a standard electrical
20 cord?

21 A. Yes. I asked the company if they would
22 give me another one for the road and they said no.

23 Q. Do they sell those things at places like
24 Radio Shack?

1 A. They wouldn't let you charge it, no.

2 Q. Wouldn't let you charge it?

3 A. They wouldn't let you buy one.

4 Q. How much does one cost?

5 A. I have no idea. Like one hundred and
6 something dollars.

7 Q. For a cord?

8 A. I believe so.

9 Q. In Cloverdale Farms what was noted as
10 being incorrect was the EDLP contract?

11 A. There was no pricing in the window. If
12 you would like, I can show you a picture of the
13 store. He doesn't allow pricing in the windows.

14 Q. Then he shouldn't have an EDLP contract,
15 should he?

16 A. EDLP contract says you can have one of
17 four things. You can have a two by two sign in the
18 window. You can have a shelf sign on the pack
19 rack. We had a shelf sign on the pack rack.

20 Q. So you are saying the signage was
21 proper?

22 A. It was proper. It wasn't proper to
23 Mr. Fasciani because we didn't have a two by two
24 sign in the window.

1 Q. Do you have pictures of the store
2 showing that you were right and he's wrong?

3 A. Um hmm.

4 Q. That is a yes?

5 A. Yes.

6 Q. Were they taken at this same time?

7 A. Yes.

8 Q. Where are those pictures?

9 A. I have them at home.

10 Q. Do you know why they were not provided
11 to me?

12 A. You didn't ask for them.

13 Q. Would they support your claims?

14 A. Um hmm.

15 Q. That is a yes, isn't it?

16 A. Yes, I have a picture of that store.

17 Q. Do you have pictures of other stores --

18 A. Yes.

19 Q. -- that would show that you were right
20 and the company was wrong?

21 A. You would have to look at the pictures
22 and decide for yourself.

23 Q. When did you take the pictures?

24 A. Right after this.

1 Q. Did you go around to each one of these
2 stores and take pictures?

3 A. Most of them.

4 Q. Did you do that on your own or anybody
5 tell you to do that?

6 A. I felt that I needed some proof of what
7 I was saying.

8 Q. Did you send letters to the company?

9 A. I wasn't working for the company
10 anymore.

11 Q. You could have appealed your
12 termination. You could have asked for an open
13 door. You could have requested for somebody to
14 review this.

15 A. I tell you what after what I went
16 through with Mr. Fasciani I don't know if I would
17 want to work --

18 MR. SAHADY: Appeal within the
19 company; is that what you meant, Mr. Loftis?

20 MR. LOFTIS: I am sorry. I just
21 asked the question.

22 MR. SAHADY: You don't want us to
23 understand what you are asking?

24 A. I spoke to Mr. Fasciani.

1 MR. LOFTIS: I am asking the
2 questions. I am not going to answer any questions
3 from you.

4 MR. SAHADY: You don't want us to
5 understand what you are asking?

6 MR. LOFTIS: I am not going to
7 answer questions from you.

8 MR. SAHADY: I am not asking you a
9 question. I am asking you to clarify your
10 question. When you said --

11 MR. LOFTIS: He answered my
12 question. Let me finish. Okay? I don't need to
13 be interrupted any more.

14 MR. SAHADY: I am going to interrupt
15 each and every time I consider it necessary to
16 interrupt, and I will not take instructions from
17 you or co-counsel sitting there.

18 MR. LOFTIS: I am not going to take
19 instructions from you either.

20 MR. SAHADY: If you don't wish to
21 answer my inquiry as to what you meant, that is
22 fine. We'll have it on the record.

23 MR. LOFTIS: That is fine.

24 Q. You could have requested that your

1 termination be reviewed by someone above

2 Mr. Fasciani, couldn't you?

3 A. Yes. I talked to everybody. I went to
4 the president of the company.

5 Q. You did?

6 A. Yes.

7 Q. When did -- how did you do that?

8 A. I called Mr. James Maguire.

9 Q. Did you talk to Mr. Maguire?

10 A. Yes.

11 Q. And did you document that conversation?

12 A. No, but probably on his phone records
13 that I called.

14 Q. Did you document it? Did you write down
15 what you said and what he said?

16 A. No.

17 Q. What did Mr. Maguire say?

18 A. I asked him why you are doing this to
19 me, and he said it was out of his control.

20 MR. SAHADY: He said what?

21 THE DEPONENT: It was out of his
22 control.

23 Q. He wasn't the president of the company,
24 was he?

1 A. Yes.

2 Q. Was president of R.J. Reynolds Tobacco
3 Company?

4 A. He and I started off together.

5 Q. And he was the president of
6 R.J. Reynolds Tobacco Company?

7 A. Yes. We started together in 1976.

8 Q. When you started together doesn't
9 necessarily mean he would be president of the
10 company, does it?

11 A. No.

12 Q. What made you think he was the president
13 of the company?

14 A. He was president of sales.

15 Q. Is he president of the company or head
16 of sales?

17 A. He was head of sales.

18 Q. So he's a vice-president of the company?

19 A. I really don't know what the terminology
20 is.

21 Q. Then why did you say you called the
22 president of the company?

23 A. I said I called the president of sales.

24 Q. So you didn't say you called the

1 president of the company?

2 A. I'm sorry. I made a terminology
3 mistake.

4 Q. You made a mistake?

5 A. I am sorry. I thought I was flawless
6 but I am not.

7 MR. SAHADY: That's another error
8 you have made.

9 Q. Which one of these stores do you have
10 pictures of?

11 A. Cloverdale Farms.

12 Q. Just tell me every one.

13 A. I really don't know. I would have to
14 look at my pictures.

15 Q. What kind of camera did you use?

16 A. Could have been a Pentax. I'm not sure.

17 Q. And do the pictures show the dates on
18 them, when they were taken?

19 A. I couldn't tell you. I really don't
20 know. I would have to go look at the pictures.

21 Q. Is it normal when you set the picture --
22 do you set the camera so it would record the date
23 the picture was taken?

24 A. I couldn't tell you. I couldn't give

1 you an honest answer.

2 Q. Look at Assonet Star. The stamp number
3 on the lower right is page 6. Do you see that one?

4 A. Yes.

5 Q. That is one where the EDLP contract was
6 not in compliance because you -- actually, USA was
7 ten cents below Monarch?

8 A. Yes.

9 Q. Do you know what the state minimum was
10 at that time?

11 A. I believe it was -- for Monarch, \$4.01.

12 Q. For Monarch?

13 A. Yes.

14 Q. And Monarch was at \$3.95?

15 A. There just had been a major -- the
16 reason we were out there that day there had been a
17 major tax increase, and I think in Massachusetts 75
18 cents. There was a lot of confusion on pricing.
19 The retailers -- all the prices were scrambled, so
20 we were out here trying to straighten them out.
21 There were EDL prices that were incorrect because
22 the retailer wasn't sure what it was themselves
23 anymore. There was a big price change, so we were
24 trying to go through and straighten them out, and

1 previous to this, all the pricing was correct, but
2 there was a -- at that particular time we were
3 trying to get the pricing back to the correct
4 amount. I told the retailer they had to have the
5 same price as the lowest price in the store.

6 Q. Prior to that 75 percent increase, was
7 everybody in compliance with state minimums?

8 A. What do you mean? With Monarch?

9 Q. Yes.

10 A. No. They were below.

11 Q. Before the 75 percent increase?

12 A. Right.

13 Q. And you would have told this retailer
14 they had to be at parity if you want to get the
15 EDLP contract?

16 A. You have to be at parity.

17 Q. Now, I believe there were only two.

18 A. I was not the only rep doing this. It
19 was state-wide, so basically, state of
20 Massachusetts was moving on tax revenue because the
21 prices were below state minimum. If they were
22 priced properly, the state would have gotten their
23 5 percent on the proper price.

24 Q. So every sales rep had the same issue to

1 deal with?

2 A. Oh, yes. There was one in New Bedford
3 who had even more than me.

4 Q. And every sales rep was to supposed to
5 tell the retailer either get it to parity or cancel
6 the contract?

7 A. Some of the reps weren't like that.
8 They were very aggressive. Some reps said you
9 match the lowest price or you're going to lose your
10 contract. Some reps were very aggressive. I just
11 said had to be at parity.

12 Q. Who did you hear being very aggressive?

13 A. There was an aggressive rep in New
14 Bedford.

15 Q. How do you know that?

16 A. Because I heard some of the prices over
17 here. Retailers will tell you the pricing.

18 Q. How did you know what the sales reps
19 were communicating?

20 A. Just from meetings here and one rep
21 would talk about how he did things.

22 Q. But you never observed how sales reps
23 did it in the store?

24 A. I didn't follow reps around, no.

1 Q. Did you prepare a response to the
2 termination document?

3 A. I believe I did. I don't know.

4 Q. Did you send it to the company?

5 A. I think I did. I don't know. Do you
6 have it?

7 Q. No.

8 A. You know what? I was terminated that
9 day so there was no response any more after that
10 day.

11 Q. Did you not prepare a response?

12 A. It's possible. I am not sure.

13 Q. But if you prepared a response, you
14 wouldn't have sent it to the company?

15 A. Well, I was fired so what good would it
16 have done?

17 Q. I didn't ask you that. I didn't ask you
18 what good it would have done. I just want you to
19 answer. I just want to know if you sent a response
20 to the company or not?

21 A. I believe I did.

22 Q. But you believe you possibly prepared
23 one?

24 A. There were so many files from

1 Mr. Fasciani. I can't remember exactly every
2 response I did.

3 Q. Your attorney showed me one this
4 morning.

5 A. Yes.

6 Q. And he asked me to give it back to him.

7 A. Yes.

8 Q. It was handwritten notes.

9 A. Maybe there were some notes I made on
10 this. I don't know.

11 Q. Then there was a typed version of it.

12 A. Possibly. I don't know. There's a lot
13 of files.

14 MR. LOFTIS: Mark 22.

15 (Exhibit Number 22 marked for
16 identification.)

17 Q. Have you seen that document before?

18 A. Oh, yes. The state of Massachusetts,
19 yes.

20 Q. And if you go to page 3 --

21 A. There's no numbers on the page.

22 Q. You just kind of got to count. See
23 where it says Count III?

24 A. Yes.

1 Q. And it talks about the pedaling of
2 cigarettes for a minimum price. Do you see that in
3 Paragraph 13?

4 A. Yes.

5 Q. Is that what we've been talking about,
6 the EDLP program?

7 A. We were below the legal price on full
8 price, too.

9 Q. Was that unrelated to EDLP?

10 A. That was a different issue, yes. That
11 was -- basically told the retailer you had to price
12 your product the same as the others.

13 Q. Price your product the same as what?

14 A. We wanted to be at the same price as our
15 competition.

16 Q. Give me an example. Give me a brand
17 example.

18 A. I will get the state.

19 Q. No, I am not interested in what the
20 state law is now.

21 A. I am just giving you an example.

22 Q. I can't tell what you are looking at.

23 A. These were -- at this time, these were
24 the state minimums in Massachusetts, okay, so you

1 may go into a store state minimum was 5.49 and
2 there might be a 70 cent buy down and state minimum
3 should be 4.79 legally, might be 4.69, so we
4 encouraged the retailer he had to match that price
5 by contract.

6 Q. What's he matching?

7 A. Competition's price.

8 Q. Give me a brand example.

9 A. Marlboro is 4.69 and Winston would have
10 to be 4.69. If it's 4.69, Winston have to be 4.69
11 so 70 cents off.

12 Q. In order to get the contract?

13 A. Yes. We just wanted to be treated
14 parity.

15 Q. But the only thing you would tell the
16 retailer is if you want the contract, you've got to
17 be at parity?

18 A. Correct.

19 Q. All right. Anything else you are
20 talking about selling cigarettes below minimums?

21 A. Well, on Monarch we told the retailer he
22 had to match the lowest price, and many times -- if
23 you look here Wave the minimum price is 3.53.
24 Monarch the minimum price was 4.01. If he was part

1 of the program, he got a 25 cent buy down which
2 would bring it legally to 3.76, but we told the
3 retailer that he had to match the lowest price in
4 the store which was 3.53 which was below state
5 minimum pricing for Monarch. It was not just me.
6 It was state-wide. I believe there were other
7 states, too.

8 Q. You are telling the retailer they had to
9 be at parity the lowest price in the store if they
10 wanted the EDLP or if they wanted the contract?

11 A. That is what the contract stated. They
12 had to be at parity.

13 Q. But they didn't have to have a contract,
14 did they?

15 A. Hmm.

16 Q. You could cancel the contract if they
17 couldn't do it?

18 A. You could cancel it. You could cancel
19 the contract any time you want.

20 Q. It wasn't the retailer's option to get
21 to parity?

22 A. We told him he had to match the lowest
23 price in the store.

24 Q. Correct, and that is all you ever told

1 him?

2 A. Correct.

3 Q. On page 2 of this document, Paragraph 8
4 says you were discharged in violation of the
5 covenant of good faith and fair dealing. Do you
6 see that?

7 A. What count?

8 MR. SAHADY: Page 2.

9 A. On October 28, 2002 R.J. Reynolds --
10 yes, that is what it says.

11 Q. Is that what you were referring to
12 earlier because you were getting close to 30 years
13 of service to deny you your pension and benefits?

14 A. Yes.

15 Q. Is that what you are talking about
16 there?

17 A. Well, me not being able to make my 30
18 years denied me --

19 Q. Is that what you are talking about in
20 Count II?

21 A. No. It just says I was discharged after
22 26 years. That is all it says. It says on October
23 28 in violation of of covenant of good faith and
24 fair dealing wrongfully discharged Michael Rodio

1 from its employ after 26 years of good and faithful
2 service.

3 Q. What is the -- what was wrong about your
4 termination other than the fact that you were
5 almost at 30 years in getting your pension?

6 A. I believe it was unfair. I did my best,
7 did the job properly, and they terminated me
8 possibly to deny me of my 30-year pension.

9 Q. Okay. That is fine.

10 MR. LOFTIS: Mark 23.

11 MR. SAHADY: Mr. Loftis just gave me
12 a copy of what he wanted to use as Exhibit 23 which
13 were answers of the plaintiff, I believe, to the
14 defendant's interrogatories and then to be
15 absolutely fair to him, because he had some notes
16 on it, I gave it back to him, and I asked him to
17 give it to me. He declined. Is that accurate, Mr.
18 Loftis?

19 MR. LOFTIS: I am not answering
20 questions at this time.

21 MR. SAHADY: Of course not. I would
22 not have expected you to.

23 MR. LOFTIS: Actually, you gave me
24 documents earlier and I gave them back to you.

1 MR. SAHADY: Yes, so now we are
2 even, are we not?

3 MR. LOFTIS: I wouldn't say we are
4 even because you've got lots of documents that I'm
5 entitled to that you refuse to give me.

6 Q. Let me ask you this. I will make this
7 simple. Here's what I wanted to show you. It says
8 plaintiff's answers to defendant's second set of
9 interrogatories. Have you ever seen that document
10 before?

11 MR. SAHADY: Are you entering this
12 as an exhibit?

13 MR. LOFTIS: No. I am just showing
14 him what you provided me --

15 MR. SAHADY: All right.

16 MR. LOFTIS: -- as a pleading in the
17 case.

18 MR. SAHADY: This is the document
19 that you took back from me?

20 MR. LOFTIS: It's the same document,
21 yes, without any notes on it.

22 MR. SAHADY: Go ahead.

23 Q. Have you seen that document before?

24 A. I believe so. I am not sure.

1 Q. Do you recall --

2 A. Is that called an interrogatory?

3 Q. Yes.

4 MR. LOFTIS: Mr. Sahady, one thing
5 you could do I believe Mr. Rodio is supposed to
6 verify answers to interrogatories. That was not
7 done. Can you have that done?

8 MR. SAHADY: Verify his answers?
9 Verify what?

10 MR. LOFTIS: Verify his answers to
11 interrogatories. Can you do that?

12 MR. SAHADY: The answers don't
13 contain that?

14 MR. LOFTIS: No. They were not
15 verified. Can you do that?

16 MR. SAHADY: Yes, I will do that.

17 Q. What is the video you are referring to?

18 A. It was a video targeting Senator Kennedy
19 as a enemy of the tobacco industry. May have been
20 before your time.

21 Q. What do you mean before my time?

22 A. How many years have you got?

23 Q. Got what?

24 A. With the company.

1 Q. I don't even work for Reynolds.

2 A. Oh, you don't, so you weren't around
3 when he was around. He probably knows about it.

4 Q. How long ago was that?

5 A. Quite a few years ago. He had a video
6 targeting Senator Kennedy, that he was their Number
7 1 enemy.

8 Q. Was that more than ten years?

9 A. I really couldn't tell you.

10 Q. Did that have anything to do with your
11 termination?

12 A. I had mentioned it to Mr. Fasciani.

13 Q. Do you think that it had anything to do
14 with your termination?

15 A. I have no idea. I don't know why I was
16 terminated.

17 Q. When did you see the video?

18 A. Oh, we had it in a meeting.

19 Q. Who was your manager at the time?

20 A. I can't remember if it was -- who it
21 was.

22 Q. Was it Art Scott or before his time?

23 A. Might have been before his time.

24 MR. SAHADY: Was that the time the

1 president of the company was before Congress and
2 raised his right hand? Was that --

3 MR. LOFTIS: It's not your turn.

4 MR. SAHADY: I am just asking him.

5 MR. LOFTIS: You can't ask questions
6 here.

7 MR. SAHADY: I was just jogging his
8 memory.

9 MR. LOFTIS: This whole thing is
10 problematic.

11 THE DEPONENT: It's a problem.

12 MR. SAHADY: It's a big problem.

13 MR. LOFTIS: It's going to be a big
14 problem.

15 Q. Company reps were made to sit through
16 promotional tapes. What promotional tapes are you
17 talking about?

18 A. We were told that 3,000 people a day
19 died from smoking and that, you know, we had to go
20 out and find more smokers.

21 Q. What promotional tape?

22 A. This came from the chairman of the
23 company, I think, Jim Johnson at the time. We lose
24 3,000 people a day smoking. I think it was on the

1 National news, too.

2 Q. When did you look at it?

3 A. This is when we were in a meeting at one
4 time.

5 Q. Who was your manager at the time?

6 A. I think it was Mr. Lowsher (phonetic)
7 maybe Mr. Scott or Mr. Lowsher.

8 Q. And was it a video tape of Mr. Johnson --
9 something Mr. Johnson had said publicly?

10 A. It was in our meeting.

11 Q. But you were shown a tape?

12 A. Yes, like a video that we lose 3,000
13 people per day.

14 Q. I'm trying to get you to tell me who was
15 on the video.

16 A. I believe it was Mr. Johnson, Jim
17 Johnson.

18 Q. To whom was he speaking?

19 A. To a sales force.

20 Q. Okay. And that was shown to all of the
21 sales reps?

22 A. I believe so.

23 Q. And that would have been, what, roughly
24 ten years ago?

1 A. It's possible.

2 Q. Did you keep a copy of the tape?

3 A. It's possible. I don't know. I am not
4 sure. I would have to look.

5 Q. Where would you look to get it?

6 A. Hmm.

7 Q. Where would you look to get it?

8 A. Look where I keep tapes.

9 Q. Do you have any tapes that you were
10 shown while you worked for the company?

11 A. Hmm.

12 Q. Do you have any tapes at home that you
13 were shown why you worked for the company?

14 A. At home?

15 Q. Or anywhere. Gave them to your
16 attorney. Put them in your dog's house? Where?

17 A. It could be in the dog's house.

18 Q. Did you keep any tapes?

19 A. I have video tapes. Yes. Some things.
20 I am not sure what I have.

21 Q. You have videos that were related --
22 that you were shown why you worked for Reynolds?

23 A. It's possible I may have some. I am not
24 sure. I may have to look.

1 Q. Have you done that?

2 A. I will have to look.

3 Q. And the instructions that you were given
4 regarding the EDLP contract, were those the same
5 instructions that all other sales reps were given
6 to the best of your knowledge?

7 MR. SAHADY: Objection.

8 A. I followed the contract to what it was
9 written. I tried to meet parity.

10 Q. And in your termination, there were only
11 two instances where it was noted that it wasn't at
12 parity?

13 A. Again, we were in the middle of a tax
14 change. There was a lot of confusion on pricing.
15 The retailers were confused. We were trying to get
16 the pricing straightened out. It was out of my
17 control at that time.

18 Q. I am sorry. What was out of your
19 control?

20 A. There was a tax increase, a lot of
21 confusion on pricing. We were trying to get the
22 pricing straightened out at that time.

23 Q. And I believe -- you did have a copy of
24 the field sales employee handbook?

1 A. Yes. I guess so. I believe so. Yes.

2 Which one? I've got many of them.

3 Q. The one that was in effect at the time
4 of your separation.

5 A. Which year was it printed?

6 Q. I don't know which year it was printed.
7 Do you have one with you?

8 A. Different years.

9 Q. Did you get -- did you keep all the
10 versions that you got?

11 A. I tried to kept most of them, yes.

12 Q. All right. Are you familiar with the
13 company standards of business conduct?

14 A. I didn't read it this week but --

15 Q. What is that?

16 A. At the time -- I was aware at that time
17 but I haven't read it recently.

18 Q. You have not read it recently?

19 A. No. I work for another company now.

20 Q. Were you aware the company had a hot
21 line that you could call in any irregularities?

22 A. I did call in. I called in about
23 Mr. Fasciani.

24 Q. All right. And what did you say when

1 you called in?

2 A. That Mr. Fasciani was threatening me.

3 Q. Did you identify yourself?

4 A. Yes. I called Mr. Deschenes.

5 Q. Is that the hot line?

6 A. Well, I didn't know there was a hot
7 line. What I did is I called my immediate superior
8 Mr. Kane, and I believe I talked to Mr. Deschenes,
9 also.

10 Q. But my question was were you aware that
11 there was a hot line that you call in for any or
12 what you believe to be irregularities?

13 A. I didn't know about any hot lines.

14 Q. Did you read the Standards of Business
15 Conduct?

16 A. At that time, yes, probably.

17 MR. LOFTIS: Mark 23.

18 (Exhibit Number 23 marked for
19 identification.)

20 Q. Exhibit 23. If you look at the bottom
21 of the second page you see a 1-800 number.

22 A. Okay. Maybe I didn't have that one.

23 Q. What is that?

24 A. Maybe I didn't have the 800 number.

1 Q. This from the Standards of Business
2 Conduct.

3 A. I did call Mr. Deschenes in human
4 resources.

5 Q. My question was did you ever call that
6 1-800 number that is listed in the Standards of
7 Business Conduct?

8 A. Possibly. I am not sure. I did call
9 the office a couple of times.

10 Q. Do you specifically recall calling that
11 1-800 number?

12 A. I said I don't know. Might have been a
13 different 1-800 number.

14 Q. Where would the other number have been?

15 A. Might have picked it up on the human
16 resources. I am not sure.

17 MR. LOFTIS: Let's mark this Number
18 24.

19 (Exhibit Number 24 marked for
20 identification.)

21 Q. Just to verify your signature for me,
22 Mr. Rodio.

23 A. That is my signature.

24 Q. Do you recognize the second page?

1 A. I think we were just sent this and told
2 to sign it.

3 Q. The second page I think you did it
4 electronically. Do you recall that?

5 A. I don't recall.

6 Q. But where your signature appears that is
7 your signature?

8 A. I think these were faxed to me. We just
9 had to sign it.

10 Q. And it just says that you certify that
11 you understand the Standards of Business Conduct,
12 correct?

13 A. That is what it says.

14 Q. Did you do that?

15 A. I signed this.

16 Q. Had you read it?

17 A. I read my whole book.

18 Q. Understood it?

19 A. I understood to the best of my ability.

20 Q. And agreed to comply with it?

21 A. Yes, I agreed to comply, agreed to
22 comply with what I understood.

23 Q. But just read what it says. Read the
24 first paragraph.

1 A. It says "I certify that I have read and
2 understand the Standards of Business Conduct and
3 acknowledge that it is my responsibility to comply
4 with these Standards and to assure that those
5 reporting to me also comply."

6 Q. And what is the next paragraph?

7 A. Except as noted below, I confirm that I
8 have no knowledge or information of any violations
9 of the Standards of Business Conduct that have not
10 been corrected or previously reported."

11 Q. And what did you fill in?

12 A. There is nothing there.

13 Q. And then go to the last page. "Except
14 as noted below, I confirm that I have no knowledge
15 or information of any violations of the Standards
16 of Business Conduct that have not been corrected or
17 previously reported." And did you fill anything
18 in?

19 A. But see the business misconduct happened
20 in August of that year, not in April. Mr. Fasciani
21 threatened me in August not April. This is dated
22 April.

23 Q. I am talking about violations of the
24 Standards of Business Conduct.

1 A. Oh, what are you talking about? What
2 business?

3 Q. Well, you signed the statement that says
4 you read and understood the Standards of Business
5 Conduct. I'm just asking you to verify for me --

6 A. That is my signature.

7 Q. I am asking you to verify that you did
8 not note any violations of the Standards of
9 Business Conduct; is that correct?

10 A. Well, you know, you are not going to say
11 something against your own company. Of course not.

12 Q. But it was your job to.

13 A. I would be fired if I did. I said one
14 thing to Mr. Fasciani, told him it was illegal
15 about pricing, and I got fired.

16 Q. When did you tell him the pricing was
17 illegal?

18 A. I think it was 2001, early 2001.

19 Q. What's that?

20 A. Maybe early in 2001.

21 Q. And what was his response?

22 A. Went in one ear and out the other.

23 MR. SAHADY: It's by my watch six
24 o'clock, and we have been here since eleven.

1 MR. LOFTIS: We didn't start until
2 almost noon.

3 THE STENOGRAPHER: It was 10:54.

4 MR. SAHADY: That would make it
5 seven hours. I think enough is enough at seven
6 hours at a stretch. If you wish to examine him
7 further, we can make other arrangements. Fair?

8 MR. LOFTIS: I am not sure I have
9 anymore questions. I may have more questions after
10 we move to compel the documents that have not been
11 produced.

12 MR. SAHADY: Off the record.

13 (Discussion off the record.)

14 MR. SAHADY: Go ahead, Mr. Loftis.

15 MR. LOFTIS: We asked for documents
16 that would be supportive of his claims. You
17 responded to that interrogatory without objection.
18 You will have to say yes or no. Mr. Rodio said
19 numerous times today that he had documents that
20 would be supportive of his claims which have not
21 been produced.

22 THE DEPONENT: You are putting words
23 in my mouth.

24 MR. SAHADY: Just wait.

1 MR. LOFTIS: And he has photographs
2 which would be highly relevant.

3 MR. SAHADY: You make a request for
4 those.

5 MR. LOFTIS: I have made a request.

6 THE DEPONENT: I said I might have
7 photographs.

8 MR. SAHADY: Just wait. Do you want
9 to act as your own counsel?

10 THE DEPONENT: No.

11 MR. SAHADY: Depositions in a
12 discovery process are just for that purpose, so
13 that if anything is missed, it can be supplemented.

14 MR. LOFTIS: I am perfectly willing
15 to supplement if you will tell me what you will
16 supplement.

17 MR. SAHADY: If you tell me what you
18 want supplemented as a result of this --

19 MR. LOFTIS: Mr. Sahady, I have told
20 you in three phone conversations and at least two
21 letters what I wanted supplemented, and I have yet
22 to get it.

23 MR. SAHADY: You tell me what you
24 want supplemented, and if I deem it to be something

1 you ought to have, I will give it to you. If not,
2 I will so answer you, and then we can have the
3 court decide.

4 MR. LOFTIS: I will renew the
5 request if you want to make a note of it.

6 MR. SAHADY: Go ahead. Let me hear
7 you.

8 MR. LOFTIS: Plaintiff's answers to
9 defendant's first set of interrogatories Number 1,
10 Number 2 and Number 3. Specifically as related to
11 Mr. Rodio's deposition testimony today, Number 1,
12 identify all documents which relate to or support
13 any of the allegations contained in plaintiff's
14 complaint. He has testified today that he has
15 documents that he believes relate to or support the
16 allegations in his complaint.

17 MR. SAHADY: He didn't say he
18 believes they support or relate. This was your
19 conclusion from his testimony.

20 MR. LOFTIS: I asked him a question.
21 He said yes, they did support his claims.

22 MR. SAHADY: This is what you
23 concluded after you asked him if he had pictures.

24 MR. LOFTIS: Will you supplement

1 that?

2 MR. SAHADY: You make the request.

3 MR. LOFTIS: I just made it.

4 MR. SAHADY: I will have to consider
5 it.

6 MR. LOFTIS: When will you let me
7 know?

8 MR. SAHADY: Within a reasonable
9 time in due course.

10 MR. LOFTIS: Which means you will
11 not.

12 MR. SAHADY: No, it doesn't mean
13 that. It means I will respond to you within a
14 reasonable time and reasonable request.

15 MR. LOFTIS: What is a reasonable
16 time?

17 MR. SAHADY: What a reasonable
18 attorney will take to answer a request such as
19 this.

20 MR. LOFTIS: You have already
21 answered it.

22 MR. SAHADY: I will answer again
23 upon your further request.

24 MR. LOFTIS: I am not making another

1 request. I made multiple requests. I have been
2 blind sided by documents that you knew existed and
3 deliberately did not produce and I did not object.

4 MR. SAHADY: This is the first I
5 heard of pictures.

6 MR. LOFTIS: It's not my fault.

7 MR. SAHADY: It's not my fault
8 either.

9 MR. LOFTIS: There are other
10 documents that you were aware of.

11 MR. SAHADY: I would love to see
12 those pictures, and I would love to use them in
13 court. I have not seen them.

14 MR. LOFTIS: And I will not see them
15 until you tell me you are ready to show them to me,
16 right?

17 MR. SAHADY: And you will not see
18 them until I see them first and I decide whether
19 you should see them. Isn't that how it works?

20 MR. LOFTIS: Nope.

21 MR. SAHADY: All right.

22 MR. LOFTIS: Then we'll file a
23 motion to compel.

24 MR. SAHADY: That's what you will

1 have to do, and I am confident the court will do
2 what is right.

3 MR. LOFTIS: And then we'll decide
4 what we need to do to finish up this deposition.

5 MR. SAHADY: So you are done today
6 with the exception of --

7 MR. LOFTIS: I am done today because
8 you said I was done.

9 MR. SAHADY: No. I didn't say you
10 were done. I was reminding you that it's been
11 seven hours. You want to go further?

12 MR. LOFTIS: I don't have anything
13 further at this time until we resolve the discovery
14 issues. If we are going to have to come back, I
15 would only want to have to do it once.

16 (Whereupon the deposition suspended
17 at 5:55 p.m.)

18

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CERTIFICATE

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

I, Sherri A. DeTerra-Medeiros, Shorthand Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify:

That MICHAEL RODIO, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the said witness.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal this 24th day of September, 2004.



Sherri A. DeTerra-Medeiros

Sherri A. DeTerra-Medeiros
Shorthand Reporter
and Notary Public

1 you wrote it, or were you just guessing?

2 A. We were sent reports from Mr. Fasciani.
3 It may have come off one of his reports.

4 Q. But do you believe -- and could you see
5 how many EDLP accounts you had sold versus other
6 sales reps in the division?

7 A. It changed. I could have been first,
8 second or third. I could have been one of three.
9 Maybe at that time I might have been first, but it
10 could have changed.

11 Q. In any event --

12 A. The other person may have sold two this
13 week, so he might have 53, I don't know.

14 Q. But is it your understanding that during
15 this period of time you were one of the top in
16 selling numbers of EDLP accounts in your division?

17 A. I worked in one of the poorest areas of
18 the state, so people look for -- they look to save
19 money. The poor people --

20 MR. SAHADY: Did you listen to the
21 question?

22 THE WITNESS: Okay.

23 MR. SAHADY: Answer the question as asked.
24 If you don't remember the question, ask Mr. --

1 that?

2 A. 2002?

3 Q. Yes.

4 A. I don't have it in front of me, so I
5 can't --

6 Q. If that's what it was, if it was, fails to
7 meet expectations, did you understand the company
8 policy was that if you were rated as fails to meet
9 expectations you were not entitled to a bonus?

10 A. That was something that Mr. Kane and Mr.
11 Fasciani wrote, yeah.

12 Q. Did you understand that was company
13 policy?

14 A. Hm? Yeah.

15 Q. And on Fax Page 10, you reference two
16 other grandfathered employees?

17 A. Yes.

18 Q. Ken Pondelli and Paul --

19 A. Dabouge.

20 Q. And what was the significance of you
21 making that notation, the fact that you were
22 grandfathered as well?

23 A. Yes. The three of us were grandfathered
24 employees. There were only a few of us in the

1 Boston area, and it seemed like all of us were
2 having problems with management.

3 Q. And the grandfather simply means that you
4 had a pension that a lot of other people didn't
5 have?

6 A. It meant that if there was a merger or
7 a company reduction, that we had a good chance of
8 being offered our pension and insurance, health
9 insurance, under the old policies of the company.

10 Q. As opposed to if you were terminated?

11 A. Yeah, yeah.

12 Q. And did you believe that just because you
13 would have been offered a package that you would
14 have received your grandfathered pension plan?

15 A. Well, that's if it was offered, yeah.

16 Q. Didn't you also understand that in order
17 to receive that grandfathered pension, you had to
18 be age 55 and have 30 years with the company?

19 A. I guess it depends on what the merger
20 policy was. I don't know what the policy was going
21 to be.

22 Q. But you had a copy of the document that
23 described the pension plan, did you not?

24 A. Yeah, I've got original documents of the

1 pension plan, yeah.

2 Q. Now I assume that not all of the
3 grandfathered employees were in the Boston region,
4 were they?

5 A. What, nationwide? No, I don't think so.
6 There was a good number, though.

7 Q. And do you know how many other employees
8 in the Boston region that were -- let me ask you
9 this. Do you know who else in your division was
10 grandfathered?

11 A. In my division? There may have been three
12 others.

13 Q. In addition to Mr. Pondelli and Mr.
14 Dabouge and yourself?

15 A. Yeah.

16 Q. And just, you've got a notation November
17 2001, so we're still in 2001; is that the way you
18 would read this document?

19 A. Yes.

20 Q. Fax Page 11, we have no date; so again I'm
21 assuming that we're -- well, no, I'm confused
22 because earlier we were in 2002 and then we
23 reverted back to 2001.

24 A. These are just notes.

1 A. Right. It was an older model. At that
2 time it was outdated.

3 Q. Did you provide either Exhibit 28 or 29 to
4 the company prior to this lawsuit?

5 A. I couldn't. I wasn't with the company
6 anymore.

7 Q. You just need to answer my question. You
8 could have mailed it to them; you could have sent
9 it to them. I'm just verifying that you didn't.

10 A. No, no. I couldn't. I was fired; I was
11 terminated.

12 Q. On the last page of Exhibit 29 --

13 A. Yeah.

14 Q. -- where it says miscellaneous, you say
15 stock thing. What are you referring to?

16 A. I had mentioned to Mr. Fasciani in January
17 of 2001 that Reynolds had announced they were going
18 to earn \$8 a share; in the previous year they
19 earned \$4 a share. And I had mentioned that it
20 didn't seem to be totally honest. In June, I think
21 in June of 2001, Reynolds announced they were going
22 to change their accounting system.

23 Q. June of 2000 --

24 A. 2001, I believe, yeah; and during the

1 conference call, Mr. Fasciani said I had mentioned
2 that.

3 Q. I'm sorry, what conference call are you
4 talking about?

5 A. There was a conference call in 2001.

6 Q. When was the conference call?

7 A. 2001.

8 Q. I mean, what month?

9 A. June.

10 Q. June of 2001?

11 A. June or July. I believe July. I believe
12 it was July, June or July.

13 Q. Let me back you up. You said January of
14 2001 --

15 A. Um-hm.

16 Q. -- the earnings were \$8 per share?

17 A. I believe they announced they were going
18 to come out at \$8 per share.

19 Q. Do you know what the fiscal year of the
20 company was at the time?

21 A. It was January, for the year. I don't
22 know what their fiscal year is, no. Usually when
23 you figure stock, it's January to December.

24 Q. But are you aware of the fact that some

1 companies have a fiscal year which is different
2 from a calendar year?

3 A. That's possible, yeah.

4 Q. And are you aware of the fact that most
5 companies announce their earnings based on either
6 fiscal quarters or fiscal years as opposed to
7 calendars?

8 A. Fiscal quarters, yes.

9 Q. But you don't know what Reynolds' year is?

10 A. The projection was, I think they were
11 projecting \$8 a share for the year.

12 Q. And for the prior year it was \$4 a share?

13 A. Approximately, yeah.

14 Q. Did you say anything to Mr. Fasciani at
15 that time about that?

16 A. I just said that seemed kind of odd.

17 Q. And what did he say?

18 A. He said -- he just kind of nodded.

19 Q. Anything else?

20 A. Nothing I can remember.

21 Q. And then you say in July, June or July of
22 2001, there was a conference call?

23 A. Yes. And I guess at that time Reynolds
24 had made an announcement in the Wall Street Journal

1 they were changing their accounting system; and Mr.
2 Fasciani said that I had told him this was going to
3 happen.

4 Q. So he was just acknowledging that you had
5 predicted this was going to happen?

6 A. That's what he said, yeah.

7 Q. Was anything else said?

8 A. I guess that's it. I just mentioned that.
9 That's all I know.

10 Q. So does the stock thing have anything to
11 do with this case, this litigation, or were you
12 just making some notes?

13 A. I really don't know. I don't know what --
14 as far as I know, what I was terminated for was not
15 selling Monarch below the state minimum price and
16 the other thing was not advertising at a level
17 exposed to children.

18 Q. Which is nothing you testified about last
19 time, right?

20 A. Hm?

21 Q. Which is not why you said you were
22 terminated last time you were deposed?

23 MR. SAHADY: Was he asked that?

24 MR. LOFTIS: Yes.

1 A. I don't think I was asked that.

2 Q. Oh, you were.

3 A. I don't believe so.

4 Q. Just to refresh your recollection, last
5 time you were deposed, you said it was to deny you
6 your pension?

7 MR. SAHADY: In fairness to him, that was
8 the consequence, not the reason, the consequence.

9 A. It was the consequence, yeah.

10 Q. Okay. So why do you think you were
11 terminated?

12 A. For not selling Monarch below the Mass.
13 state minimum price. And one of the things that
14 was mentioned to us, they lose 3,000 people a day
15 to smoking and we have to replace those people.
16 One way we put advertising at four feet high and
17 people four feet high can view that. So I refused
18 to put that advertising up, and I was terminated
19 for that.

20 Q. When did you refuse to put it up?

21 A. It's in Mr. Fasciani's statement that I
22 didn't put it up in many accounts. In his
23 termination paper he lists all the accounts I
24 didn't put it up in.

1 Q. Did you ever have any conversation with
2 Mr. Fasciani about you can't put it there?

3 A. Yes. Two people from the Board of Health
4 in Fall River told the manager who told Mr.
5 Fasciani that they were requesting us not to put
6 the advertising on the counter in that store.

7 Q. And which stores were those?

8 A. It was the Texaco station up on New Boston
9 Road.

10 Q. What was the other one?

11 A. It was owned by the Crosson Oil Company,
12 so whatever stores they had.

13 MR. SAHADY: C-R-O-S-S-O-N Oil Company.

14 Q. Is that the same as the Texaco?

15 A. Yeah. They owned several stations in
16 town.

17 Q. And I believe you testified about this
18 before. You said that someone at the Board of
19 Health --

20 A. Two representatives from the Board of
21 Health told an area supervisor not to place the
22 advertising on the counter.

23 Q. Told an area supervisor for who?

24 A. Crosson Oil.

1 responsibility and Mr. Fasciani's responsibility.

2 Q. So if there was no regulation that
3 prohibited it, there wouldn't have been a problem
4 with putting advertising there?

5 MR. SAHADY: I object. This is a matter
6 of law that he would not be competent to give you
7 the citation chapter on this action.

8 Q. Was there only one Texaco?

9 A. They owned other stations.

10 Q. Did you ever hear this from anyone other
11 than -- is it Crosson Oil?

12 A. Crosson Oil.

13 Q. Did you ever hear it from anyone other
14 than Crosson Oil?

15 A. No. He was the one that made the comment
16 to us, the area supervisor.

17 Q. And what was Mr. Fasciani's comment, if
18 you recall? Do you recall him having any reaction?

19 A. No, no reaction; but if I didn't put the
20 advertising up, he would reprimand me.

21 MR. SAHADY: I'm sorry, I didn't hear
22 that.

23 THE WITNESS: If I didn't put the
24 advertising in the stores, he would reprimand me.

1 Q. Is that what he said to you?

2 A. That's what he did.

3 Q. But as far as Mr. Fasciani saying anything
4 back to you, you don't recall any response that he
5 had?

6 A. Not that day, no.

7 Q. Do you recall any other day?

8 A. No.

9 Q. And with respect to the EDLP -- and did
10 that Board of Health issue ever come up in any
11 other accounts?

12 A. No one said anything to me, no.

13 Q. And with respect to the EDLP -- I think we
14 have been through this the last time you were
15 deposed, but you had indicated that what you were
16 supposed to do is tell the retailer that Monarch
17 had to be at parity with or lower than the lowest
18 brand in the store; is that correct?

19 A. Correct.

20 Q. And you never told the retailer anything
21 other than that?

22 A. That's what the contract stated.

23 Q. And you never told the retailer anything
24 other than what the contract said they had to do?

1 A. As far as I know.

2 Q. So you now think those were the two
3 reasons you were terminated?

4 A. Yes.

5 Q. Any other reason you can think of?

6 A. No.

7 Q. Other than what you have already told me,
8 do you have any facts that you can point me to that
9 cause you to come to that conclusion?

10 A. If I didn't sell below the state minimum,
11 Mr. Fasciani would reprimand me.

12 Q. If Monarch wasn't at parity?

13 A. If I didn't advertise towards children, he
14 would reprimand me.

15 Q. But Mr. Fasciani never said those things
16 to you?

17 MR. SAHADY: He was reprimanded. He's
18 been saying that.

19 A. Mr. Fasciani admitted that I told him --

20 MR. SAHADY: Wait until Mr. Loftis asks
21 you a question.

22 Q. Have you told me every conversation you
23 had with Mr. Fasciani about the advertising to
24 children?

1 A. Hm?

2 Q. Have you told me about every conversation
3 that you or Mr. Fasciani had or participated in
4 that related to advertising to children?

5 A. I told you all I know.

6 Q. And what you were told to do with respect
7 to EDLP was to tell the retailers that Monarch had
8 to be at parity or lower than the other brands in
9 the store if they wanted to have an EDLP contract.

10 MR. SAHADY: By EDLP you mean state
11 minimum pricing?

12 MR. LOFTIS: No.

13 A. That's what the account stated.

14 Q. And you never told a retailer anything
15 other than what the contract stated?

16 A. As far as I know.

17 Q. If a retailer was not pricing Monarch at
18 parity or lower than any other brand in the store,
19 then you had the right to cancel that contract?

20 MR. SAHADY: If the price was not below
21 state minimum; is that what you mean?

22 MR. LOFTIS: No, not at all.

23 MR. SAHADY: What was the question?

24 A. What's the question?

1 verify. I believe that's what it was.

2 MR. SAHADY: So I sent you 36, but you
3 were smart enough to segregate them.

4 MR. LOFTIS: Not you, but somebody in your
5 office was smart enough to segregate them before
6 they sent them to me.

7 MR. LOFTIS: That's exactly what this is.

8 MR. SAHADY: You got them all?

9 MR. LOFTIS: Simple explanation, they're
10 36; but they're duplicates, so I've got all 18.

11 MR. SAHADY: If we duplicate these again,
12 you'll have 72.

13 Q. Mr. Rodio, you mentioned that there was a
14 supervisor for -- is it Crosson Oil?

15 A. Yeah.

16 Q. Which?

17 A. Crosson.

18 Q. I probably still won't get it right. --
19 that made the comment about the Board of Health had
20 said they didn't want the VAP POS on the counter?

21 A. On the counter facing children.

22 Q. Do you know who that supervisor was?

23 A. Al Roulette.

24 Q. Spell that last name for me.

1 A. R-O-U-L-E-T-T-E.

2 Q. And have you talked to him since this
3 lawsuit was filed?

4 A. Yes. I asked him.

5 Q. When did you talk to him?

6 A. Months ago. Probably four months ago,
7 five months ago.

8 Q. After your deposition in August?

9 A. Yes.

10 Q. And what was the purpose of that
11 conversation?

12 A. I just asked him, is that what he said to
13 us and he said yeah.

14 Q. And what stores was he responsible for?

15 A. The chain, Crosson Oil.

16 Q. What names did they operate under?

17 A. Texaco. At that time it was Texaco, I
18 believe. It either said Crosson Oil or Texaco at
19 that time.

20 Q. There was also a Crosson Food Market. Is
21 that the same?

22 A. Same people, yeah.

23 Q. And in your -- let me read some names of
24 some stores to you and see if you can tell me if

1 any of those were affiliated with Crosson.

2 Cloverdale Farms?

3 A. No.

4 Q. Globe Wine?

5 A. No.

6 Q. Crosson Food Market?

7 A. Yeah.

8 Q. New England Farms?

9 A. No.

10 Q. Assonet Store?

11 A. No.

12 Q. Sterling Package?

13 A. No.

14 Q. Lucky Dollar Store?

15 A. No.

16 Q. Red's Dairy Store?

17 A. No.

18 Q. Swidey's Variety?

19 A. No.

20 Q. Bellencourt's Variety?

21 A. No.

22 Q. And the exhibits, Exhibits 28 and 29, were
23 those prepared shortly after your termination?

24 A. Yeah. I tried to put the positive things

1 in here that they did and things that were illegal
2 such as not putting the pricing below state minimum
3 and advertising to children, I didn't put in here.

4 Q. So if we go to Exhibit 28, Fax Page 9,
5 Crosson Food, third sentence: VAP pricer was in
6 proper location with proper pricing when I left the
7 store. Is that true?

8 A. According to Mr. Fasciani, no. He said he
9 didn't put it in.

10 Q. No, no. When you left the store, the VAP
11 was there?

12 A. The pricer was there, yes.

13 Q. The VAP pricer was in the proper location
14 with proper pricing in it. Do you see that?

15 A. The pricing was there, yeah. The pricing
16 was there, yeah.

17 Q. With the proper pricing in it?

18 A. The pricing was there, yes.

19 Q. And the pricing that's in it is the POS?

20 A. Just the prices there.

21 MR. SAHADY: What does POS stand for?

22 THE WITNESS: The advertising.

23 MR. SAHADY: POS, is it?

24 MR. LOFTIS: Yes.

Termination Document

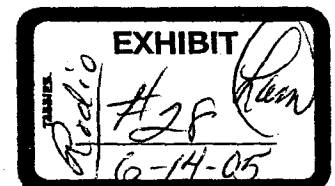
September 4th Reprimand- Manager ran into calls quickly. The contract status and positioning in the calls were good considering that some of the store previously had nothing. There was competitive pressure from Philip Morris, which made some situations in flux. Basically the calls looked good, relations had improved, and most of the work was by myself. Mr. Fasciani looked for any little detail that he could find to down play any accomplishment that I had made.

Mr. Fasciani said to me that calls he looked at on Monday only had four distribution errors.

We were in the process of changing prices on the week and for the most the changes were correct with the exceptions of a few stores.

The laptops were several years old and were going to be replaced in another week or so. The problem was that the computer were usually die in the morning do to the batteries were weak. On Monday I had my extension cord and was able to properly record the calls. I did not make a lot of calls that day due to the fact that I had to make a presentation with a small chain which took several hours. We only had one cord it was a pain to disconnect and then reconnect at night. I asked the company for a spare cord, but the would not give us one for the car. In addition at the time the fuse was blown in the car so that I could not recharge in the car even if I had a cord.

October 9th When Mr. Fasciani came to out to check he voice mailed me to meet him. I was already on the trade and I was very busy, but I tried to backtrack and work with him. The store we were in that morning was sunnyhill farm. Philip Morris had just changed our merchandising and they had moved my counter displays and removed the prices on the RJR pack rack. I spent several hours and tried to replace the prices the best of my ability and make sure all the pricing was proper on all the racks. This store had a monarch edlp contract with a monarch



display on the counter and monarch sign in the window, but this was not mentioned in Mr. Fasciani's report.

Cloverdale Farm- Winston light soft may have been hidden behind the Winston light box. There may have only been a few packs left in the store. It is common that on some marginal brands stores may only have a few packs of that brand. It customer could easily come in and buy those two packs with in hours of being in the store. Since the owner and the manager were not in the store the clerk asked me not to touch any pricing. I told him that I would return in a few days to change the prices. There was a vap-pricing card on the counter and there were digital prices on the rack itself, which could easily be viewed by the consumer.

Monarch was in a prime position and properly priced at the lowest price. The retailer did not allow signs in the window for cigarettes and I was going to address placing a Monarch sign on the counter as soon as I could meet with the manager. The manager was not in the last few times I had stopped by. It was difficult to place signs on the counter do to the Philip Morris contract, which would not allow competitors to place signage on the counter. Mr. Fasciani said that I said the owner was difficult to deal with and I did not want to rock the boat. I did not say that in this manor when in fact the owner is a gentlemen, but is older and not in the store regularly.

Globe Wine Store- This store was a metro contract. I spoke to the owner about placing a slim line display and vap age communicator. The owner did not want either. Due to the 75-cent mass tax increase. The store volume was dropping and I informed Mr. Fasciani that we would probably have to lower the contact payment in the future. We had digital pricers on the counter displays informing the consumers of the discounted price of Winston, Salem, and Camel. We had a Doral counter display on the second counter of the store for years. Previously Mr. Fasciani had told me that it was a good-looking display shot. He was aware we had a display in there. The Doral display had been recently taken down due to pilferage along with all other displays. The Dorals and Salems were placed on a

shelf behind the counter with pricing. There was little space to merchandise products in this store. It was to RJR advantage to keep the existing unit because it held more products to merchandise a larger number of products. The owner was not in and mentioned to Mr. Fasciani the ramifications of the lower volume and not having a Doral display on my next visit.

Crosson Food Mart- This was a regular contract. Under this kind of contract two designated RJR products have to be missing in order to be in violation. Vap pricer was in proper location with proper pricing in it when I left the store. Monarch was in a prime location with advertising and the lowest price. We had a pole side in front of the store advertising the prices of Winston. We had digital pricers on the rack itself. We had an enhanced Doral sign on the counter. We controlled 60% of the rack space in this store. In most stores if you can control 25% you are doing well. RJR controlled approximately 95% of signage in the store due to my efforts. It is possible that some of the paper signage on the counter could be removed after I left the store.

New England Farm- The Camel wide full flavor was not a designated brand and did not effect the contract. Camel wide light was in stock. Vap pos were in display and all pricing was correct. There were three price dials on the rack. I had placed the fourth for Salem when I was in the call with twin stick, but the twin stick obviously didn't hold so that when Mr. Fasciani came into the store the price dial was missing. The pricing on the brand is computerized so that even if a customer bought a pack of Salem he would still receive the discount.

There had 75-cent state tax increase in the previous month and which the owner took all prices off the rack. This happened in many assignments not just mine. I order four new pricer dials and placed them on the rack as previously requested. There was a price dial on Salem but the channel stick, which originally held it on, let go. I tried to restick it as best as possible, but it also fell off. There was monarch signage below the rack advertising the monarch price. In this chain we were only authorized one sign in the window. There was another store in this

chain in Middleboro in which the owner requested the monarch contract. The rep never followed through, but was not reprimanded.

Assonet Star- Camel wide light was in stock, but is not a required brand. That pos card was placed in the communicator before I left the store. A clerk or competitive sales rep may have removed it after I left the store. Monarch was in a prime position on the rack with signage. During the tax increase it is possible that the monarch pricing was misalign. I spoke to the owner and he said he would change it in his computer as soon as possible. He said he had forgot about the change, but was in the process of completing this task. All prices were communicated on the fixture with digital pricers. There were a new light boxes in the back room to be installed, but I also had approximately 10 to 12 much larger installations to do before hand. I had little to no extra help and was trying to do the installations in an orderly manor myself. I would eventually get to this installation.

Sterling Package- None of the three brands miss reported were designated brands. I mistook Salem ultra king for Salem ultra 100 and reported it. There were vap pos in the communicator when I left the store. There are digital pricer on the counter display advertising Winston, Salem and camel. The RJR vap promotion had it's own four foot section that I had secured to be displayed. Monarch display was on the counter in a prime position. The owner did not want displays in the window. This store previous had no RJR contract and I was able to build trust and agreement with the retailer to gain two new counter displays and a four-foot carton rack. Two existing overhead racks with advertising. A four foot hanging from the ceiling and two temporary counter displays. I was also in the process of negotiating for a third counter display.

Lucky Dollar Store- This is retail assist account. They only receive \$25 a month contact money. It was a very low volume and low payment store. The distribution requirements are not as strict. RJR controlled over 50% of the signage

and merchandising in this store. There were three vap displays visible to the customer. My computer battery had gone down in this store which made it difficult to report. I tried to make mental and paper notes to be reported later. I didn't say that I forgot. Monarch pos on the front rack were in prime position and I did not say I had too much to do.

Reds Dairy Store- My computer was down so I tried to make reports as best I could from the front counter with mental and paper notes. We have no contract in this store. I had spent months trying to negotiate a contract with the manager and was very close.

Swidey's Variety-Some of the Dorals were in stock in Doral full flavor box 100, but there were only a few packs left. This store only carries small amounts of packs on low sale brands. Vamp POs was in display. Vap display was in prime position. 100% of the counter displays were RJR. We had two generic displays on back bar. We had two vap displays on back bar, both in prime visible location. We had a Doral enhanced display in the window. Temporary sale and display on the counter and RJR overhead display. Monarch was advertised and displayed on back bar. The price was at parity with the lowest price when I left the store.

Vallencourt Variety- Camel wide and Doral 100 were not required for contract payment. The store was in transition. Philip Morris had just removed a three-foot RJR fixture leaving RJR in a two-foot fixture without proper pricing. I had told Mr. Fasciani of this problem, and he was totally aware of the situation. The three foot rack was suppose to be placed back with all its pricing and pos with Monarch on it in a few weeks or less.

Summary-The main goal of this particular week was to change the price of Winston, Salem and Camel and Doral by a nickel. When changing prices one has to rush to try to get as many stores done. None of the errors reported were intentional, but the combination of the computer going down the second day, plus rushing may have been some of the causes to my errors. There was a part timer who was Mr. Fasciani responsibility. She told me that she was confused because

Mr. Fasciani trained her. I told her she could work with me part of the day and I would try to help her learn the business. I've always tried to report on the computer as accurately as possible, but I am only human and make mistakes, though not intentionally. As for the vap backup cards we are not given these cards, they come in a box with the display from the wholesaler. Most retailers put the displays up and throw away the advertising. Mr. Fasciani suggested that I got though retailers dumpsters to find the advertising and then place it in stores.

I spent 26 years building respect with my customers and this assignment there was little to know merchandising in the stores listed. Most of the racks we are speaking of were placed by myself along with gsw AL Gonsalves who once commented to me that I did more work in this assignment then previous reps. Some of the stores were new accounts or were stores in which RJR had no contracts I recent years. It takes a long time to rebuild a company business in an area that was let go. I took on the challenge and placed a great number of new units along with the responsibility of maintaining them. In the mean time Philip Morris was trying to tear out or remove the RJR units in some of the stores which made maintenance much more difficult.

I enjoyed working with my customers and built good working relations with them. I always showed respect to my customers and counter parts. I've always tried to be honest and to work hard. I feel terrible about Mr. Fiscaini report. He tries to make me look like criminal, when in fact I am nothing like that.

Anyone can go to my customers and ask the way I acted with them. Mr. Fasciani has tried to tear me apart for quite some time weather he was told to do it or took it on himself was somewhat of a mystery to me. I had recently informed Mr. Fasciani that I was receiving heavier than normal competitive activity in stores with our racks. I asked if he could give a little help, instead he came out and looked for any little error he could find in my reporting to make the situation worse.

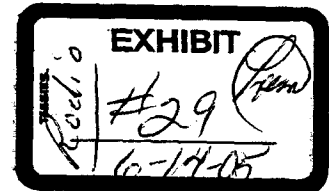
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Termination Document.

Sept 4 Reprimand - Manager ran into call's quickly. The contract status and positioning in the call's were good considering that some of the store previously had nothing. There was competitive pressure from Philip Morris which made some situations in flux. Basically the call's looked good, relations had improved, most of work was by myself. Mr. Fasciani looked for any little detail that he could find to downplay any accomplishments that I had made.

Mr. Fasciani said to me that call's he looked at on Monday only had 4 distribution errors.

We were in the process of changing prices on this week and for most the changes were correct with the exception of a few stores.

~~Goodbye Terms~~

I had laptop's were several years old and were going to be replaced in another week or so. The problem was that computer would usually die around 10 or 11 AM because batteries

②

OCT 8

Were weak. That Tuesday I did not have ~~extra~~^{my} cord so that I had to make notes in some of the call's near the end of the day. We only had 1 cord. It was a pain because you would have to disconnect from home the reconnect at Night. I asked Company for a spare but they would not give us one for the car. In addition fuse was blown in car so that I could not recharge in the car even if I had a cord. Replaced fuse to 25 amp from 15 amp near the end.

OCT 9

When Mr. Fasciani came out to check he voice mailed me to meet him. I was already on the trade and very busy, but I tried to backtrack and work with him. The lot store Sunnyhill farm was a mess. Philip Morris had changed our merchandising all around. I spent hours to get it back into shape. Philip had ripped RSR pricers off of the RSR Rack. They also unloaded our counter displays, placing Rack's out of compliance.

~~We were~~ possibly Mr Fasciani met me at this store but did not mention it

(5)

IN his report.

Cloughdale Farm - Winston light Soft may have been hidden or the few pack's that were left sold out. Sometimes soft pack's might be hidden behind bar.

The manager was not in when I made this store. The clerk asked me not to touch anything until I could contact manager. I informed the clerk that we were changing our discount from 60% to 75% and would return to call in a couple of days.

There was a Vap Pricing card on counter. There were digital pricers on the rack itself. Again clerk did not want me to change prices until manager was contacted. But -

Monarch was in a prime ^{position} and properly priced. There are many stores in Boston area with no signs, but it was ongoing that as long as Brand was in prime position it was OK. OWNER did not want signs in his windows.

We only had a shelver to work with in this store. If a light Box were placed we would lose ability to advertise products including Monarch. There are stores

(4)

Store Sell
about 16 ctns
WK

RSR

* 20-30

with no light boxes that we promote in.
Mr. Fasciani has a chain Verc Petroleum
in Raynham. The store has little to no
RSR merchandising, vap card may or may
not be on counter but he is buying down
RSR products. The cost to the company
maybe 20-30 dollars

all Requests
were granted

Globe Wine - I talked to owner
about placing a new slimline display + vap
and owner did not want either. Store
volume had dropped to 40 cartons per week.
This was a Metro contract of which vap
display was not required. We had digital
prices on the counter display. RSR was
1 of the 2 only permanent display in this
store. I was going to cut back on this
contract in the near future. Fasciani
made a suggestion to replace rack which
I followed up on. There was little space
to merchandise RSR products in this store.
It was to RSR's advantage to keep
existing unit because it held more product
+ made it possible to merchandise a
large number of products.

(5)

Crosson Food Mart - There were 2 packs of Camel light soft in the store on my previous visit possibly they were not visible. ONE Brand out of stock does not affect contract dollars.

Vap pricer was in proper location when I left. I placed whatever pos that was present in the store and in my car. We had prices on the rack's with the proper pricing. I always try to change pricer to special offer but sometime clerk may change to Plus Tax.

We had only sign in store, a pole sign and paper sign in window. We had the only signage. We had the sole floral display in store. No other company had signage in window.

New England Farm sis 01740

1 missing BSR Brand does not affect contract. I believe wide FE in stock but maybe the light was mistake for Full Flavor.

Vap pos pricing was in display. Owner threw away back up cards so I could not place them. I did ensure all pricing was correct.

There had been a 75 State Tax increase in previous month's in which owner took all digital prices off of the rack. I ordered

- ⑥ 4 New Pricers and placed them on the Rack as requested. There was a pricer dail on Salem but the channel strip that originally held it on let go. I restuck it up but possible it fell off.

Assonet Star.

#30 to 60.

Camel Wide possible mistake but not a required brand. Had no effect on contract.

Vap Pos was in holder when I left the store. Possible Back up cards were thrown out of store.

I had spoke to owner previously about monarch pricing. He said he forgot about the change and was in the process of changing that week.

Owner places Vap on 1 shelf. We have 1 of 2 Permanent Signs in window. The owner advertise his price with Tax included. and \$

I ordered New light Boxes and had the store light to be installed as soon as possible. I had tanger sets to be done with greater priority.

①

Sterling Package - Not of the 3 brands were required so had no effect on contract
I NEVER went to this Store with Carlo on that day.

POS was in Vap communicator when I left store.

There are also digital price's on the counter displays.

Again owner threw out POS but RSR had it's top shelf section on a 4 foot counter section.

Monarch display was on counter in a prime position. Store owner did not want cigarette signs in window.

This store previously had no RSR contract. I was able to build new trust and agreement with Retailer to gain 2 New counter displays, a 4 foot counter Rack, 2 existing overhead's Rack's with advertising and was in process of negotiating a 3rd counter Rack.

Lucky Dollar Store - \$5 per month payment
There is no distribution requirement.

We control over 50% of POS in this Store
Vap on back but visible to customer. Vap displays on back visible to customer. Computer Battery was down.

⑥

I didn't say I forgot. Had to make note in call and as far as I remember I placed the displays in the computer.

Monarch Pos on Rack in front of Consumer in prime position. I did not say I had to much to do, Carlo putting words in my mouth.

Red's Dairy.

Computer was down. I tried to Report as best I could from front of counter. We have not contract in this store. I was trying to work a contract with the manager. There is not financial impact because there was no contract.

possibly
HLS 1230.

Sundays - Some of the Doral Styles were in stock ie Doral Full Flavor Box but there were only a few packs left. Possibly sold out. Vap Pos was in display, Vap display's in prime location

Pricing on Winston - Camel - Doral - Monarch Salem had a display pricing was missing but owner conveyed discount.

When I left store Monarch was 3.52
Metro Contract - No distribution requirement

(9)

Valleron's - Camel Wide not a required brand
No effect on Contracts Doral lighting not required
~~Doral lighting may or may not display.~~

Philip Morris took out RSR 3 foot Rack
along with all prices. Mr. Fasciani
was aware of the situation. The Prices were
always there but since Philip Morris removed
Rack we were left with a 2 foot Rack with
no prices. Mr. Fasciani was totally aware.
We had paper Monarch sign in window. There
are no window with Pos in this Store. Store
was in the middle of a major change over
and RSR was in process of placing 3 Foot
Rack back with prices.

Summary

I was helping to train part-timer
who was Mr Fasciani's responsibility. He
did not train her. She said she was confused
so for part of the day I said I would
help her out. Again my computer went
down making it a little more difficult
to report possibly causing some of the errors.

I felt reporting was very important
but Mr. Fasciani would put words in
my mouth to make me sound bad.

(10)

I spent 26 years building respect with my customer's. In this assignment there was little to no merchandising in many of the store's listed. Most of the Rack's we were speaking of were placed by myself or along with GSW or Goncalves who commented that I did more work in this assignment than any other Rep. Some of the store were new accounts or were store's like which RSR had ^{no} contract in recent years. It takes a long time to rebuild a companies business in an area that was let go. I took on the challenge and placed a great # of new units along with the responsibility to maintain them. In the meantime Philip Morris was try to tear out or remove some of the RSR units in some store. I enjoyed working with my customers and built good working relations with them. I always showed respect to my customer's and counterparts. I've always tried to be honest and to work hard. I feel terrible about Mr. Fasciani report making me look like a criminal when actually I'm honest.

ONE can go to my customers
and ask the way I acted with
them. Mr. Fasciani tried to tear
me apart for quite some time. Whether
he was told to do it or took it on
himself was somewhat of a mystery.
At one time there was a small
scratch on my car fender. He said
did your son do that. I couldn't
believe the hate comments he would
DIRECT toward's me.

Mr. Fasciani has harassed me and
made me ill.

He ~~was~~ tried to ruin my future
with his bad words.

Received Call Friday NOV 22
That RSS TOOK BACK thier
Half of Scholastic Savings

| | | |
|---------|---------------|----------------|
| 17869 - | RSS gave 7584 | Should be 8934 |
|---------|---------------|----------------|

(12)

Misc

Stock Thing

Kennedy Thing

Summer Vacation

When I asked if OK to take week this summer Mr. Fasciani said you don't want to go thru what you did last summer.

Can't collect because Mr. FASCIANI WROTE MISCONDUCT. I was always a gentleman to people. I tried to treat people fairly.

EXHIBIT F

1 Exhibit 2.

2 MR. LOFTIS: You can mark it as Exhibit 2
3 I don't think it's ever been authenticated. I
4 don't know what it is either.

5 MR. SAHADY: For identification.

6 (Marked for identification, Exhibit 2,
7 List of Prices.)

8 Q. So the state, as we were saying, then
9 relies on the -- I'm quoting, by the various
10 manufacturers to wit in order to set the minimum
11 price?

12 A. That would be my assumption. I have never
13 seen correspondence from RJ Reynolds to the state,
14 but I would assume that that is how the state
15 establishes its state minimum pricing. I'm not
16 involved in that process.

17 Q. And the state minimum pricing varies from
18 time to time?

19 A. That is correct.

20 Q. And it would be important to Phillip
21 Morris or to RJR to maintain either the lowest
22 price or price at parity with other competitors in
23 a given area?

24 A. I can't speak to Phillip Morris.

| | | | |
|------------------------------|-----------------|-----------------|----------------|
| ✓ <u>FULL MARGIN</u> | <u>\$ 43.92</u> | <u>\$ 54.90</u> | <u>\$ 5.49</u> |
| ✓ <u>GENERIC</u> | <u>\$ 41.15</u> | <u>\$ 51.44</u> | <u>\$ 5.15</u> |
| <u>LIGGETT SELECT</u> | <u>\$ 27.74</u> | <u>\$ 34.68</u> | <u>\$ 3.47</u> |
| <u>AMERICAN SPIRIT</u> | <u>\$ 43.85</u> | <u>\$ 54.82</u> | <u>\$ 5.49</u> |
| <u>MONARCH</u> | <u>\$ 32.06</u> | <u>\$ 40.08</u> | <u>\$ 4.01</u> |
| <u>MONTCLAIR</u> | <u>\$ 33.03</u> | <u>\$ 41.28</u> | <u>\$ 4.13</u> |
| <u>SPORT</u> | <u>\$ 28.06</u> | <u>\$ 35.08</u> | <u>\$ 3.51</u> |
| <u>PRIVATE STOCK</u> | <u>\$ 30.57</u> | <u>\$ 38.22</u> | <u>\$ 3.83</u> |
| ✓ <u>GPC AND VICEROY</u> | <u>\$ 32.41</u> | <u>\$ 40.52</u> | <u>\$ 4.06</u> |
| ✓ <u>PALL MALL AND MISTY</u> | <u>\$ 32.41</u> | <u>\$ 40.52</u> | <u>\$ 4.06</u> |
| ✓ <u>U.S.A</u> .95 | <u>\$ 29.90</u> | <u>\$ 37.38</u> | <u>\$ 3.74</u> |
| <u>WAVE</u> | <u>\$ 28.18</u> | <u>\$ 35.23</u> | <u>\$ 3.53</u> |
| <u>RIVIERA</u> | <u>\$ 29.90</u> | <u>\$ 37.38</u> | <u>\$ 3.74</u> |
| <u>MALIBU</u> | <u>\$ 33.03</u> | <u>\$ 41.28</u> | <u>\$ 4.13</u> |
| <u>POINT</u> 3/17 + 75¢ | <u>\$ 24.97</u> | <u>\$ 31.22</u> | <u>\$ 3.13</u> |
| <u>NATURAL BLEND</u> | <u>\$ 33.59</u> | <u>\$ 41.99</u> | <u>\$ 4.20</u> |
| <u>PYRAMID</u> | <u>\$ 29.90</u> | <u>\$ 37.38</u> | <u>\$ 3.74</u> |

EXHIBIT
 10-14-05
 HANE
 10-14-05

EXHIBIT G

CHARGE OF DISCRIMINATION

☐ FEPA
☐ EEOC

This form is effected by the Privacy Act of 1974; see Privacy Act Statement on reverse before completing this form.

Massachusetts Commission Against Discrimination and EEOC
 (State or local Agency, if any)

NAME (Indicate Mr., Ms., or Mrs.)

HOME TELEPHONE NO. (Include Area Code)

Mr. Michael Rodio

508-520-0561

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

32 Mount Street

Wrentham, MA 02093

Dorset

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME: R.J. Reynolds Tobacco Company

NO. OF EMPLOYEES/MEMBERS
 1,000 or more

TELEPHONE NUMBER (Include Area Code)
 508-870-2211

STREET ADDRESS

CITY, STATE AND ZIP CODE

1500 West Park Drive, Suite 203, Westborough, MA 01581

NAME

TELEPHONE NUMBER (Include Area Code)

STREET ADDRESS

CITY, STATE AND ZIP CODE

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☒ AGE ☐ RETALIATION ☐ OTHER (Specify)

DATE MOST RECENT OR CONTINUING
 DISCRIMINATION TOOK PLACE
 (Month, day, year)

10/28/02

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):

On October 28, 2002, I was terminated from my position as an area sales rep. for R.J. Reynolds tobacco Company. I believe that the reason for my termination was because of my age, (d.o.b. 8/1/52) fifty years old. Therefore, I charge the Respondent with unlawful termination against me in violation of Massachusetts General Laws, Chapter 151B, Section 4, Paragraph 1 and Title VII of the 1964 Civil Rights Act & the Age Discrimination in Employment Act of 1967, as amended, 29 USC 621, et seq., ADEA.

I was an employee of R.J. Reynolds Tobacco Company for 26 years and my discharge was because of my age and was to deny me benefits such as pension and other benefits that would have been due me had I completed another four years with R.J. Reynolds Tobacco Company.

☐ I also want this charge filed with the EEOC.

will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the foregoing is true and correct.

NOTARY - (When necessary to meet State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
 (Day, month, and year) 22nd day of April, 2003

no 4/22/03

Charging Party (Signature)

FORM 5

PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE AND MUST NOT BE USED

My commission expires:
 7/05/07